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SUBJECT: MACEDONIA: MANAGING POLITICAL FALLOUT FROM THE
RETURN OF ICTY CASES

REF: 05 SKOPJE 895

Classified By: P/E CHIEF SHUBLER, REASONS 1.4(b) & (d).

SUMMARY

¶1. (C) The ICTY's impending return to Macedonian jurisdiction of four unindicted cases which deal with acts allegedly committed by ethnic Albanians (eAlbanians) during the 2001 conflict will raise political tensions here. The ethnic Albanian opposition party DUI will argue, possibly with some justification, that the cases should be exempt from prosecution under the country's 2002 Amnesty Law. If the Amnesty Law is not found to apply, and if official investigation of the facts and evidence were to lead to indictments, resulting prosecutions could involve several DUI notables. Heightened political tensions, and judicial weaknesses that could prevent local courts from handling the cases in a fair and transparent manner, require a plan to prevent eAlbanian reaction from causing political instability in Macedonia.

¶2. (C) We believe the USG should join the consensus position held by NATO, the EU and OSCE that, if and when the cases return to Macedonian jurisdiction, it will be up to the GOM to deal with the issue, taking fully into account the Amnesty Law. In the meantime, we are working with our EU and OSCE colleagues to support efforts to prepare for the return of cases by providing special training in international humanitarian law for judges, prosecutors and defense attorneys, and to have in place a monitoring regime for any trial that results from evidence-based indictments. End Summary.

RETURN OF ICTY CASES WILL RAISE POLITICAL TENSIONS

¶3. (C) After numerous delays over the past two years (reftel), the ICTY currently plans to return to Macedonian jurisdiction in 2007 the first of four cases dealing with acts allegedly committed by ethnic Albanians during the 2001 inter-ethnic conflict. The ICTY did not bring indictments in any of the four cases, but did indict two ethnic Macedonians (ex-Minister of Interior Ljube Boskovski and his aide) in a separate case for war crimes allegedly committed in the ethnic Albanian town of Ljuboten in 2001. ICTY trials in the

Ljuboten case may begin in April. If the Ljuboten trials begin as scheduled, we can expect strong eMacedonian public and political pressure to try at least one of the four eAlbanian cases as a political "counterweight."

APPLICABILITY OF AMNESTY LAW RESTS WITH PUBLIC PROSECUTOR

¶4. (C) The return of the four cases will raise political tensions here, as ethnic Albanian DUI opposition leaders argue with some justification that the country's 2002 Amnesty Law exempts the suspects from domestic prosecution. (NOTE: All of the cases involve allegations against persons once associated with the eAlbanian insurgent group that fought during the 2001 conflict, most of whom are now DUI leaders or members. END NOTE.) The ethnic Albanian governing coalition partner DPA has not fully shared the DUI view, but DPA VP Menduh Thaci recently told us that the cases would have to be reviewed by both/both eMacedonian and eAlbanian prosecutors in order to determine whether amnesty applies. At least one of the cases involves a former insurgent who is now a DPA member.

¶5. (SBU) In fact, under the Amnesty Law, the Macedonian Public Prosecutor in the first instance court district that has jurisdiction for the case will be responsible for determining whether the Amnesty Law applies in that case. Persons accused of war crimes also may apply for amnesty to the first instance court that has jurisdiction for the case. If amnesty is granted, the prosecutor cannot appeal that decision.

ADDRESSING JUDICIAL SYSTEM WEAKNESSES....

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¶6. (SBU) The previous government worked to address judicial system weaknesses by passing a law on courts designed to strengthen the independence and efficiency of the judiciary. It also passed a witness protection law to strengthen witness protection in serious crimes cases. In 2006, with USAID support, the government inaugurated a new courtroom for Skopje Basic Court One, which will provide secure facilities and adequate witness protection for prosecuting "serious and complex crimes," including war crimes cases. The government is planning to pass by late January a Law on Cooperation with the ICTY that would formalize procedures for coordinating with the ICTY on war crimes cases.

...TRAINING AND MONITORING

¶7. (C) Embassy's OPDAT staff have been working for the past year with the Skopje OSCE mission to provide training to judges and prosecutors in international humanitarian law, including war crimes law. The OSCE has pledged to keep the ICTY updated regularly on its assessment of the Macedonian courts' ability to handle war crimes cases. In addition, the ICTY has offered the GOM support in building the judiciary's capacity to process such cases.

¶8. (C) In November 2006, the Ambassador and EU Special Representative approached PM Gruevski and Justice Minister Manevski to urge GOM acceptance of OSCE monitoring of war crimes investigations and trials. Both Gruevski and Manevski supported OSCE monitoring, with Manevski commenting that it would help ensure impartiality and objectivity in "these very sensitive cases." OSCE Skopje plans to hire a senior judge with ICTY experience to act as a consultant and trainer for OSCE monitors, who would observe any trial involving one or more of the four cases. (Comment: We consider it important that OSCE ensure that this judge spend considerable time in Macedonia, rather than just visiting periodically. End Comment.)

¶9. (C) Manevski also underscored during the meeting the need for proper training for the prosecutors and judges who would be involved in war crimes trials. In addition, he noted that

the Justice Ministry had expanded its list of candidate judges for handling the cases, to include more candidates from "non-majority ethnic communities."

INTERNATIONAL COMMUNITY CONSENSUS ON RETURN OF CASES

¶10. (C) Despite the political and judicial challenges inherent in returning the cases to local jurisdiction, both the EU and OSCE support the GOM's desire to allow the judicial process to run its course, provided adequate training is provided and judicial safeguards are in place to ensure a fair and transparent process. NATO has moved away from its earlier opposition to the return of cases (reftel), with NATO HQs having issued in early 2006 a public statement that: "If and when the (case) files return to Macedonia, it will be up to the authorities in the country to deal with the issue, taking into account that there is an Amnesty Law related to the conflict of 2001." Post believes the USG should follow the NATO policy, which is in line with the EU and OSCE positions regarding the disposition of the ICTY cases.

GOVERNMENT PONDERS FURTHER DELAY

¶11. (C) During a January 11 meeting with P/E Chief, the Prime Minister's Chief of Staff reported that PM Gruevski was considering asking for a further delay in the return of cases. Having taken into account the impending Kosovo final status resolution, the approach of the Boskovski trial, and the poor state of government relations with DUI, the government has decided it would be best for the cases to begin coming back at the end of 2007, or later. P/E Chief concurred with that assessment, noting it would be best not to rush the return until the necessary judicial reforms and measures were in place.

COMMENT

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¶12. (C) Given existing weaknesses in the Macedonian judiciary and the likelihood of strong political reaction from eAlbanians to the return of cases, the preferred outcome of this process would be for the ICTY to delay the return. However, since the ICTY appears intent on beginning the returns process in 2007, we believe it is prudent in the meantime to develop a plan for managing the likely political fallout. To bolster confidence in the judicial system, we intend to continue to provide training for Macedonian judicial authorities, while developing a monitoring regime to ensure impartiality, transparency and objectivity in those cases that come to trial.

MILOVANOVIC